STATE OF MICHIGAN
IN THE SUPREME COURT

JESSICA A. DILLON,

Plaintiff/Appellee,

v

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY,

Defendant/Appellant.

Supreme Court Case No. _____

Court of Appeals Case No. 324902

Isabella County Circuit Court
Case No. 12-10464-NF

_____/

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JUDGMENT APPEALED FROM

Defendant-Appellant State Farm Mutual Automobile Insurance Company seeks leave to appeal from the Court of Appeals' May 3, 2016 decision, which affirmed the trial court's final judgment against State Farm dated November 12, 2014 and denial of State Farm's motion for summary disposition dated November 8, 2013. (App A, Court of Appeals Opinion; App B, Amended Judgment; App C, Opinion and Order on Plaintiff's Motion for Summary Disposition and Defendant's Motion for Summary Disposition.)

QUESTION PRESENTED FOR REVIEW

MCL 500.3145(1) provides that a plaintiff may not bring an action for recovery of no-fault benefits more than one year after the date of the automobile accident causing the injury unless (as relevant here) the plaintiff provides "written notice of injury" as provided in the statute within a year of the accident, including a description of the "nature" of the plaintiff's injury.

Here, the plaintiff filed her action more than one year after the date of her automobile accident and gave only oral notice of back and shoulder abrasions, and no notice at all of the hip injury for which she actually sought recovery of benefits from State Farm.

The question presented for review is:

Does oral notice of an injury for which the plaintiff does not seek recovery of no-fault benefits satisfy MCL 500.3145(1), which requires a plaintiff to give "written notice of injury," including a description of the "nature" of the plaintiff's injury?

The Circuit Court answered yes.
The Court of Appeals answered yes.
The Plaintiff answers yes.
State Farm answers no.

INTRODUCTION AND REASONS FOR GRANTING LEAVE TO APPEAL

The Court of Appeals held in a published decision that a plaintiff can satisfy a written-notice provision of a statute of limitations by providing oral notice. The Court then held that the plaintiff's oral notice of back and shoulder injuries was sufficient to give notice of a hip injury. Each of these holdings badly construes MCL 500.3145(1), which is the statute of limitations applicable to all actions for recovery of no-fault benefits in Michigan, and State Farm urges this Court to grant leave to appeal.

MCL 500.3145(1) provides that an action for recovery of no-fault benefits "may not be commenced later than 1 year after the date of the accident causing the injury unless written notice of injury as provided herein has been given to the insurer within 1 year after the accident," (or unless the insurer has made a payment for the injury, an exception that is not applicable here). The statute then goes on to provide that the plaintiff's written notice of injury must contain certain specific information to be effective: "The notice shall give the name and address of the claimant and indicate in ordinary language the name of the person injured and the time, place and nature of his injury." MCL 500.3145(1). Thus the plain language of the statute provides that a plaintiff's notice of injury must (1) be in writing; and (2) contain a description, in ordinary language, of the "time, place, and nature of [the plaintiff's] injury." If the plaintiff's notice of injury does not meet each of the requirements of the statute, the plaintiff may not file an action for recovery of no-fault benefits more than one year after the accident causing the injury.

The Court of Appeals held that the plaintiff's action here was not barred by the statute of limitations, even though it was filed more than *four* years after the accident; even though the plaintiff's notice of injury was *oral* (by voicemail), not written; and even though the plaintiff's oral notice gave notice only of road-rash injuries to her shoulder and back, *not* the hip injury for

which she actually sought benefits from State Farm. The Court of Appeals ignored the "written" notice requirement of the statute altogether, and apparently accepted plaintiff's argument that "strict, technical compliance with the legislature's requirement of written notice" was not required. (Pl's Ct of Appeals Br at 14.) The Court of Appeals then held that the plaintiff's (oral) notice of "*some* injury" within one year of the accident was "sufficient to satisfy the statute." (Slip Op. at 4; emphasis added.)

Respectfully, both parts of that holding are contrary to the plain language of the statute. The statute expressly requires "written" notice of injury within one year of the accident to extend the statute of limitations. And the Court of Appeals did not identify *any* writing sent by plaintiff to State Farm within one year of the accident. (As discussed below, the only written document of any kind sent by plaintiff within one year of the accident was a medical release that did not describe any injury and thus could not possibly have satisfied the requirements of Section 3145(1).) The statute further expressly requires the plaintiff to describe in the written notice of injury the "*nature*" of her injury; and it is undisputed that the Plaintiff here described the nature of only a back and shoulder injury, not a hip injury.

The Court of Appeals' reading of the "written notice of injury" requirement is simply not a reasonable interpretation of the plain language of the statute. Indeed, under the Court of Appeals' view, a plaintiff could give notice that she suffered a big toe injury in an automobile accident, wait 20 years and claim that she had also suffered a traumatic brain injury in the accident, and that action would not be barred by MCL 500.3145(1). Nothing in the text of Section 3145(1) suggests it compels that bizarre result. The Court of Appeals fixated on the lack of the definite article "the" in the phrase "notice of injury"—which the court called "conspicuously absent"—and took this to mean that "the Legislature was not referring to a

definite or particular injury." (Slip Op at 3.) But the court ignored the fact that the phrase the Legislature actually used was "written notice of injury *as provided herein*," meaning as specifically provided in the statute, which expressly requires several specific items for the notice to be effective, including a description of the "nature" of the plaintiff's injury. And indeed, this Court recently held (albeit in construing the "payment" exception, not expressly the "notice" exception) that the limitations period is not extended unless the insurer has "either received notice of *the injury* within one year or has made a payment of no-fault benefits for the injury at any time before the action is commenced." *Jesperson v Auto Club Ins Ass'n*, 499 Mich 29; _NW2d_ (2016) (emphasis added). Thus, this Court did *not* view the supposed lack of a definite article in the phrase "notice of injury" as significant or "conspicuously absent"; and expressly held that § 3145(1) requires "notice of *the* injury." Yet the Court of Appeals never once cited *Jesperson*, anywhere in its opinion.

This Court should grant leave to appeal to confirm that MCL 500.3145(1) means what it says. Section 3145(1) is the statute of limitations applicable to all no-fault claims in Michigan, and fairly and uniformly enforcing its plain terms is exceptionally important to our jurisprudence. This Court has issued opinions defining the other two aspects of Section 3145(1)—the "one-year-back" rule, in *Devillers v Auto Club Ins Assoc*, 473 Mich 562; 702 NW2d 539 (2005), and the "payment" exception, just this term in *Jesperson*. This Court has not yet issued an opinion specifically addressing the requirements of the "written notice of injury" exception. With this case, the trinity will be complete, and Michigan litigants will have a comprehensive and uniform interpretation of MCL 500.3145(1) that is faithful to the statute's text. As the Court stated in *Devillers*, "MCL 500.3145(1) must be enforced by the courts of this

state as our Legislature has written it, not as the judiciary would have had it written." 473 Mich at 586.

If the Court of Appeals' decision stands as the law of the land, on the other hand, the Legislature's express "written" notice requirement is read right out of the statute, as is the Legislature's express requirement that the written notice must contain a description of the "nature" of the claimant's injury to extend the statute of limitations for an action to recover benefits for that injury. This case presents legal principles of major significance to this Court's jurisprudence, and the Court of Appeals' decision conflicts with decisions of this Court, is clearly erroneous, and will cause material injustice. State Farm therefore seeks leave to appeal under MCR 7.305(B)(3), and (5), and respectfully requests that the Court reverse the Court of Appeals' decision and hold that Plaintiff's action is barred by MCL 500.3145(1). In the alternative, because this is such a clear case of the Court of Appeals failing to follow the plain "written" notice requirement of the statute, State Farm respectfully requests that the Court peremptorily reverse on the ground that Plaintiff's oral notice was not sufficient to extend the statute of limitations.

STATEMENT OF THE MATERIAL PROCEEDINGS AND FACTS

I. Relevant Facts

In August 2008, Plaintiff Jessica Dillon was struck by a motor vehicle while she was crossing the street. Her mother left a voicemail with a State Farm representative on September 16, 2008 and reported that Dillon had suffered "road rash on back, left shoulder, low back." (Ex F to State Farm's COA Brief.) She did not report any hip injury. (*Id.*) State Farm opened a file and wrote a letter to Dillon stating that it had received her claim. (Ex 3 to Plaintiff's COA Brief.) The letter contained an "Authorization for Release of Information" form, which Dillon signed and returned on September 27, 2008. (Ex 4 to Plaintiff's COA Br.) This document was a

medical release only, and did not describe any injury. (*Id.*) This was the only written document State Farm received from Dillon within one year of the accident.

Years later, in December 2011, Dillon sought treatment for left hip pain, and for the first time claimed that the injury arose from the 2008 accident. (Exs I, L to State Farm's COA Br.) Dillon had seen doctors periodically since the accident, but had never claimed any hip injury arising from the 2008 accident. (Exs G, H to State Farm's COA Br.) On March 7, 2012, Dillon had surgery to repair a left anterosuperior quadrant labral tear/detachment in her hip. (Ex Q to State Farm's COA Br.) She did not provide any records relating to a hip injury to State Farm until 2012, four years after the accident. She nonetheless claimed the hip injury arose out of the 2008 accident, and sought no-fault benefits from State Farm.

State Farm denied the claim on the ground that the claim was barred by the one-year statute of limitations of MCL 500.3145(1). State Farm never made any payments to Dillon arising out of the 2008 accident.[1]

II. The Trial Court's Decision

Dillon filed suit in the Isabella County Circuit Court on December 12, 2012—over four years after the accident in August 2008. State Farm and Dillon filed cross-motions for summary disposition, and the trial court denied State Farm's motion and granted Dillon's in part on November 8, 2013. (App C, Opinion and Order on Plaintiff's Motion for Summary Disposition and Defendant's Motion for Summary Disposition.) The trial court held that Dillon's mother's *oral* voicemail notice on September 19, 2008 that Dillon had suffered road-rash injuries to her

[1] This was a coordinated policy, so Plaintiff's primary health insurer paid for the emergency room bills relating to the shoulder and back abrasions in 2008; these bills were not submitted to State Farm.

back and shoulder was sufficient to satisfy MCL 500.3145(1) as to Dillon's claim for benefits relating to an injury to her hip. Specifically, the court held:

> In this case, plaintiff was struck by the vehicle on August 22, 2008. Plaintiff's mother notified defendant of the accident [by voicemail] on September 19, 2008. Defendant created a note in its file that listed plaintiff's name, the time and place of automobile accident in which plaintiff was injured, and described her injuries as "road rash on back" and "left shoulder, low back." Thus, this court finds that plaintiff provided written notice to defendant "of injury" within one year of the accident.

(*Id.* at 3.) The trial court reasoned that, "[a]lthough defendant claims that plaintiff failed to file her notice as to the hip injuries, this court finds that the statute merely mandates that the insured provide notice 'of injury,' not notice of the injury or every particular injury the insured may endure. Thus, this court finds that when plaintiff filed her notice of injury in 2008, she filed timely notice for the hip injury." (*Id.* at 4.)

The case thereafter proceeded to trial, where a jury awarded judgment to Dillon of nearly $400,000. (App B, Amended Judgment.) State Farm timely appealed.

III. The Court of Appeals Decision

The Court of Appeals (Sawyer, J., joined by Murphy and Ronayne Krause, JJ.) affirmed in a published decision on May 3, 2016. The Court held that Dillon's (oral) notice within one year of the accident that she suffered physical injuries of *any* kind was "sufficient to satisfy the statute." (Slip Op. at 4.) The Court rejected State Farm's argument "that the notice of injury must have specified injury to plaintiff's left hip" to comply with MCL 500.3145(1). (*Id.*)

The Court of Appeals placed heavy reliance on the Legislature's use of the phrase "notice of injury" as opposed to notice of "*the* injury." (Slip Op. at 3.) The court "contrast[ed] the phrase 'notice of injury' with the phrase 'benefits for the injury.'" (*Id.*) "In the first phrase, which describes the notice that must be given to relax the application of the one-year back rule, the use of the definite article 'the' is conspicuously absent." (*Id.*) And "[t]he fact that the

Legislature uses it later in the same sentence suggests that it was not mere oversight or poor grammar." (*Id.*) Instead, "[t]he fact that the Legislature omitted its use before the word 'injury' in 'notice of injury' indicates that the Legislature was not referring to a definite or particular injury." (*Id.*)

Thus, concluded the Court of Appeals, "if the Legislature intended for the 'notice of injury' to identify a very specific injury, such as an injury to the left hip, rather than the mere fact that an accident resulted in some injury, it would have provided that 'notice of *the* injury' must be given." (*Id.* at 3.) The Court believed that the last sentence of the statute—which requires the claimant to indicate the "nature" of his or her injury in the notice—supported this reading, because dictionary definitions of "nature" provide "reference to the general, not the specific." (*Id.* at 4.) "Accordingly, we reject defendant's argument that the notice of injury must have specified injury to plaintiff's left hip. The fact that they received notice that she suffered physical injuries in a motor vehicle accident was sufficient to satisfy the statute." (*Id.*) The Court of Appeals thus concluded that "because plaintiff gave notice of injury within one year of the accident, § 3145(1) allows her to recover personal protection insurance benefits for any loss incurred within one year of the commencement of the action." (*Id.*)

ARGUMENT

I. STANDARD OF REVIEW

This Court may grant an application for leave to appeal from a Court of Appeals decision if the case "involves a legal principle of major significance to the state's jurisprudence," if the Court of Appeals' decision "is clearly erroneous and will cause material injustice," or if "the decision conflicts with a Supreme Court decision or another decision of the Court of Appeals." MCR 7.305(B)(3), (5)(a)-(b).

This Court reviews de novo the Court of Appeals' and trial court's interpretation of a statute, including the statute-of-limitations provisions of MCL 500.3145(1). *Jesperson v Auto Club Ins Ass'n*, 499 Mich 29; _NW2d_ (2016). "If the language of a statute is clear and unambiguous, the plain meaning of the statute reflects the legislative intent and judicial construction is not permitted." *Donajkowski v Alpena Power Co*, 460 Mich 243, 248; 596 NW2d 574, 577 (1999). Courts "must give the words of a statute their plain and ordinary meaning." *Id.* at 248-49.

With respect to Section 3145(1) in particular, this Court in recent years has repeatedly "reaffirm[ed] the Legislature's prerogative to set policy and [the Court's] long-established commitment to the application of statutes according to their plain and unambiguous terms to preserve that legislative prerogative." *Devillers*, 473 Mich at 581. To preserve the legislature's prerogative to set policy, a court may not "legislate[] from the bench," "craft[] its own amendment to § 3145(1)," or "import[] its own policy views into the text of § 3145(1)." *Id.* at 582. Statutory language "must be enforced according to its plain meaning, and cannot be judicially revised or amended to harmonize with the prevailing policy whims of members of" the judiciary. *Id.* In short, "MCL 500.3145(1) must be enforced by the courts of this state as our Legislature has written it, not as the judiciary would have had it written." *Id.* at 586.

II. THE COURT SHOULD GRANT LEAVE TO APPEAL TO ENFORCE THE PLAIN LANGUAGE OF MCL 500.3145(1): THE STATUTE REQUIRES WRITTEN NOTICE AND A DESCRIPTION OF THE NATURE OF THE INJURY FOR WHICH THE PLAINTIFF SEEKS RECOVERY OF BENEFITS

A. The Statute and What It Requires

The plain language of MCL 500.3145(1) provides that a plaintiff may not commence an action "later than 1 year after the date of the accident causing the injury unless written notice of injury as provided herein has been given to the insurer within 1 year after the accident" or unless

the insurer has previously made a payment for the injury. *See Jesperson*, 499 Mich 29 (Section 3145(1) "allows for an action for no-fault benefits to be filed more than one year after the date of the accident causing the injury if the insurer has either received notice of the injury within one year of the accident or has made a payment of no-fault benefits for the injury at any time before the action is commenced"). "The language of the statute was intended as a limitation on actions for personal benefits arising under the No-Fault Act with a mechanism for extending the one year period upon filing of notice within the year." *Davis v Farmers Ins Co*, 86 Mich App 45; 272 NW2d 334 (1978).

Here, it is undisputed that State Farm did not make any payments to Plaintiff, so only the "written notice of injury" exception is at issue in this case.[2] It is also undisputed that Plaintiff commenced her action more than one year after the accident (more than four years, in fact), so Plaintiff's action can survive only if she meets the "written notice of injury" exception of Section 3145(1).

MCL 500.3145(1) provides in full:

> An action for recovery of personal protection insurance benefits payable under this chapter for accidental bodily injury **may not be commenced later than 1 year after the date of the accident causing the injury unless written notice of injury as provided herein has been given to the insurer within 1 year after the accident** or unless the insurer has previously made a payment of personal protection insurance benefits for the injury. If the notice has been given or a payment has been made, the action may be commenced at any time within 1 year after the most recent allowable expense, work loss or survivor's loss has been incurred. However, the claimant may not recover benefits for any portion of the loss incurred more than 1 year before the date on which the action was commenced. The notice of injury required by this subsection may be given to the

[2] The Court of Appeals opinion states that "Defendant made payments related to those injuries," meaning the back and shoulder road-rash injuries, but this is incorrect. Plaintiff did not submit any bills to State Farm for reimbursement following the accident (including any bills for her road-rash injuries, which were covered by her health insurer), and State Farm did not make *any* payments to Plaintiff, for any injury. Thus, the payment exception is not at issue here.

> insurer or any of its authorized agents by a person claiming to be entitled to benefits therefor, or by someone in his behalf. **The notice shall give the name and address of the claimant and indicate in ordinary language the name of the person injured and the time, place and nature of his injury.**
> (Emphasis added.)

Thus, the plain language of the statute expressly requires that the notice of injury be "written," and that the written notice contain several elements to be effective to extend the one-year limitations period. Specifically, "The notice shall give [1] the name and [2] address of the claimant and indicate in ordinary language [3] the name of the person injured and the [4] time, [5] place and [6] nature of his injury." Each of these requirements is mandatory, as provided in the "shall" in the statute, meaning that if the notice does not include all of them, the notice is insufficient to extend the statute of limitations.[3]

This means it is *not* sufficient for a claimant simply to provide the time and date of the accident. Nor is it sufficient to provide the time and date of the accident and state that the claimant suffered an injury. Nor is it sufficient for the claimant simply to provide notice that he or she intends to submit an insurance claim. The Legislature required more: The claimant must also indicate "the . . . *nature* of his injury." This description can be in "ordinary language" as opposed to technical medical language ("I hurt my hip" vs. "I suffered a left anterosuperior quadrant labral tear/detachment"), but there must be a description of the nature of the claimant's injury in the notice for it to comply with the terms of the statute and thereby extend the one-year statute of limitations.

[3] *See, e.g., Rowland v Washtenaw Cty Rd Com'n*, 477 Mich 197, 219; 731 NW2d 41 (2007) (with respect to an analogous notice statute, "the statute requires notice to be given as directed" in the statute, including by "specif[ying] the exact location and nature of the defect [and] the injury sustained").

In sum, the notice required by Section 3145(1) must be (1) in writing; and (2) indicate in ordinary language the time, place, and nature of the plaintiff's injury. If the notice fails to meet each of these requirements, the notice does not extend the statute of limitations, and an action filed more than one year after the accident is barred.

B. The Plaintiff's Action Is Barred Because She Did Not File "Written" Notice of Injury as Provided in the Statute Within One Year of Her Accident

Here, Plaintiff did not provide "written" notice of her injury as provided in MCL 500.3145(1). Plaintiff below did not identify *any* writing dated within one year of the accident that she claimed met the "written notice of injury" requirement. She argued instead that "strict, technical compliance with the requirement of written notice" was not required, and "Ms. Dillon gave timely notice in 2008 when State Farm Insurance[] received notice from its agent of the accident, took the telephone call from Jessica's mother indicating that Jessica had been in a motor vehicle accident, and had injured her low back and shoulder and recorded those statements in writing in the file." (Appellee's COA Br at 14.)

Thus, the Plaintiff does not rely on any specific writing to meet the "written notice of injury" requirement—her argument is that her oral voicemail notice coupled with *State Farm's* writings show State Farm actually had notice of her back and shoulder abrasions, and that this should be sufficient. But that is directly contrary to the plain language of the statute, which expressly requires "written notice of injury" from the injured party his or herself (or someone acting on their behalf). Indeed, the statute expressly provides that the written notice of injury must be "given" to the insurer "by a person claiming to be entitled to benefits therefor, or by someone in his behalf." MCL 500.3145(1).[4]

[4] Nor is it relevant whether State Farm had some sort of constructive or actual notice of a claim or whether State Farm was prejudiced by the lack of notice. Section 3145(1) is a statute of

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The Court of Appeals likewise did not identify any writing that could satisfy the "written notice of injury" requirement.[5] The Court glossed over the requirement entirely. The Court said Dillon's "initial complaints were of upper and lower back pain and various abrasions," but the Court did not mention that even these complaints were oral only—by voicemail from Dillon's mother on September 19, 2008. Yet the Court of Appeals held that these oral "initial complaints" of other injuries in 2008 were "sufficient to satisfy the statute." (Slip Op. at 1, 4.)

The only written document in the record that Plaintiff provided to State Farm within one year of the accident was an "Authorization for Release of Information," which, as its name suggests, was simply a form authorizing the release of her medical information. (Ex 4 to Plaintiff's COA Br.) The form contained Plaintiff's name and the date of the accident, but did not describe or reference *any* injury of any kind—not to her back, shoulder, hip, or anything else. The form therefore did not "indicate in ordinary language" (or any language) the "nature of [her] injury" (or the "place" of her injury) and therefore did not comply with the plain language of

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limitations provision, not merely a notice provision. "Notice provisions have different objectives than statutes of limitation," and whether a defendant was "prejudiced by the lack of notice" is sometimes relevant in analyzing notice provisions. *See Davis*, 86 Mich App at 47-48. Not so with statutes of limitation like Section 3145(1), which "are intended to prevent stale claims and to put an end to fear of litigation," and bar plaintiffs' untimely claims without regard to whether the defendant suffered prejudice from the lack of notice. *See id.*; *see also Rowland*, 477 Mich at 197 (with respect to an analogous notice statute, "the statute requires notice to be given as directed" in the statute, including by "specif[ying] the exact location and nature of the defect [and] the injury sustained," "no matter how much prejudice is *actually suffered*").

[5] State Farm preserved this argument below and presented it to the Court of Appeals in its appeal brief. *See, e.g.*, Brief in Support of Defendant's Sept 19, 2013 Motion for Summary Disposition at p. 12: "It is also undisputed that Plaintiff failed to give State Farm ***any*** notice, let alone ***written*** notice, of a left hip injury until more than one year after her motor vehicle accident"; *id.* at 13: "While Plaintiff did provide State Farm with ***verbal*** notice of ***an*** injury, the Michigan Court of Appeals has consistently held that this is not sufficient"; Appellant's Br. at 11, 12 (same).

Section 3145(1). This form therefore could not have satisfied the "written notice of injury" requirement of the statute, even if the Plaintiff or the Court of Appeals had relied on it.

The Legislature's requirement that a plaintiff's notice of injury be "written" was not a suggestion. Written means written. This Court for years has railed against relaxing the statute-of-limitations provisions implemented by the Legislature in Section 3145(1). As this Court stated in *Devillers*, "MCL 500.3145(1) must be enforced by the courts of this state as our Legislature has written it, not as the judiciary would have had it written." 473 Mich at 586. And as written, MCL 500.3145(1) clearly and unambiguously provides that the plaintiff's notice of injury must be "written," not oral. Indeed, if it were not already crystal clear in the plain text of the statute itself, this Court just this term *expressly* stated that the notice must be in writing and that oral notice is not sufficient: "MCL 500.3145(1) *requires the notice to be in writing*[.] Therefore, if the insured, for example, provided the insurer with only *oral* notice of the injury within one year of the accident . . . *the notice exception would not apply because written notice had not been provided*[.]" *Jesperson*, 499 Mich 29 (emphasis added).

The Plaintiff here did not provide "written" notice of injury as expressly required by Section 3145(1). Her action is therefore barred by the plain terms of the statute.

C. The Plaintiff's Action Is Barred Because She Did Not Provide Written Notice Indicating the "Nature" of the Injury for Which She Sought No-Fault Benefits, as Required by Section 3145(1)

The lack of "written" notice of injury should have ended the Court of Appeals' inquiry. Without a writing submitted by the plaintiff to State Farm within one year of the accident indicating the nature of *any* injury, the required specificity of the non-existent written notice is beside the point. In other words, this is not a case where the plaintiff gave written notice of one injury (like one to her back or shoulder) and the question is whether that written notice was sufficient to extend the statute of limitations as to another injury (like to her hip). She gave no

written notice indicating the nature of *any* injury, and that failure, as set forth above, bars her claims under the plain language of MCL 500.3145(1).

Even if Plaintiff had provided written notice of her back or shoulder injuries, that notice would not extend the statute of limitations for her claim for recovery of benefits for her hip injury. The Court of Appeals held that notice of "some injury," any injury, was sufficient, and that because the Plaintiff provided notice of "some" injury, "§ 3145(1) allows her to recover personal protection insurance benefits for *any* loss[.]" (Slip Op at 3-4; emphasis added; *see also id.* at 4: "The fact that they received notice that she suffered physical injuries in a motor vehicle accident was sufficient to satisfy the statute.") The Court of Appeals hinged its reading on the lack of the definite article "the" in the phrase "notice of injury." The Court reasoned that "[t]he fact that the Legislature omitted its use before the word 'injury' in 'notice of injury' indicates that the Legislature was not referring to a definite or particular injury," and "if the Legislature intended for the 'notice of injury' to identify a very specific injury, such as an injury to the left hip, rather than the mere fact that an accident resulted in some injury, it would have provided that 'notice of *the* injury' must be given." (Slip Op. at 3.)

But this overlooks the fact that the actual phrase in the statute does not end at "written notice of injury." The phrase instead requires claimants to give "written notice of injury *as provided herein*"—meaning as provided in the statute. The statute then goes on to provide that the notice must contain several *specific elements* to be effective: "The notice shall give [1] the name and [2] address of the claimant and indicate in ordinary language [3] the name of the person injured and the [4] time, [5] place and [6] nature of his injury."

Each of these requirements is mandatory, as provided by the "shall" in this sentence. This means it is *not* sufficient for a claimant simply to provide the time and date of the accident

and state that the claimant suffered an injury, or, as the Court of Appeals put it, "notice that she suffered physical injuries in a motor vehicle accident." (Slip Op at 4.) The Legislature required more: The claimant must also indicate in ordinary language "the . . . *nature* of his injury." The articles here *are* definite ("the" and "his," not "a" or "an"), and the statute plainly requires some *description* of the injury. As stated above, this description can be in "ordinary language" as opposed to technical medical language ("I hurt my hip" vs. "I suffered a left anterosuperior quadrant labral tear/detachment"), but there must be a description of the nature of the claimant's injury in the notice for it to comply with the terms of the statute and thereby extend the one-year statute of limitations.

The Court of Appeals' reading makes the "nature of his injury" requirement superfluous. Why would the Legislature include language requiring the insured to indicate the "nature of his injury" if all the insured had to do was say he "suffered physical injuries in a motor vehicle accident"? (Slip Op at 4.) That would be covered by the "name of the person injured" and "time" and "place" requirements of the statute (elements [3], [4], and [5] above), so the "nature of his injury" requirement would be surplusage. This Court "must avoid an interpretation that renders [statutory text] all but surplusage." *Jesperson*, 499 Mich 29.

The most natural reading of this requirement is that it requires a description of the actual injury for which the claimant seeks to recover benefits. It would be quite an unnatural reading to assume that a claimant could meet the requirement by describing the nature of some *other* injury. Indeed, if one asked a person to "indicate in ordinary language the nature of your injury," it would be quite strange for the person to respond, "I hurt my shoulder," when the person really hurt her hip. And it would be quite unnatural to assume that someone had notice that the person hurt her shoulder when she said she hurt her back.

Other language in the statute makes this reading inescapable. In addition to ignoring the words immediately following "written notice of injury" ("as provided herein"), the Court of Appeals also ignored the words immediately preceding that phrase. The Court of Appeals fixated on the lack of the word "the" in "notice of injury," but forgot to read three words back, where the statute expressly says, "*the* accident causing *the* injury." That's what this statute is all about: whether a plaintiff may file an action for recovery of no-fault benefits for "the injury" she suffered in an accident more than a year after the date of the accident causing "the injury." Here again the article *is* definite—it refers to "the injury," meaning the one suffered in "the accident," not "an" injury or "some" injury—and this strongly suggests that the relevant injury referred to in the statute is "the injury" for which the claimant seeks recovery of no-fault benefits. That is the entire predicate for the notice exception: "An action for recovery of personal protection insurance benefits payable under this chapter for accidental bodily injury may not be commenced later than 1 year after the date of the accident causing the injury unless written notice of injury as provided herein" has been provided. Thus a plaintiff may not file an action for recovery of benefits "for accidental bodily injury" more than one year after the date of the accident causing "the injury"—meaning the injury for which she seeks recovery of benefits for accidental bodily injury—unless the plaintiff gives written notice of injury as provided in the statute within one year of the accident. The fourth sentence then puts a bow on this plain reading of the statute: the "notice of injury required by this subsection" may be given to the insurer by "a person claiming to be entitled to *benefits therefor*"—meaning benefits relating to the notice of injury. All of these textual clues strongly suggest that the notice of injury must relate to the injury *for which the plaintiff seeks recovery of no-fault benefits*, and not some other injury.

Indeed, contrary to the Court of Appeals' heavy reliance on the "conspicuously absent" word "the" in "notice of injury," *this is not how this Court recently read the statute*. In *Jesperson*, this Court announced an express holding construing Section 500.3145(1): "We hold that the first sentence of MCL 500.3145(1) allows for an action for no-fault benefits to be filed more than one year after the date of the accident causing the injury if the insurer has either received notice of *the injury* within one year of the accident or has made a payment of no-fault benefits for the injury at any time before the action is commenced." 499 Mich 29 (emphasis added). Thus, this Court did *not* view the supposed lack of a definite article in the phrase "notice of injury" as significant or "conspicuously absent"; and expressly held that § 3145(1) requires "notice of *the* injury."

The Court of Appeals did not cite *Jesperson* anywhere in its opinion. This is a striking omission—this Court interpreted the exact statutory provision at issue in this case just a month and a half before the Court of Appeals issued its decision, yet the Court of Appeals never mentioned it once. At issue in the *Jesperson* was the "payment" exception of the statute rather than the notice exception, but the Court did offer substantive analysis (and an express holding) relating to the language of the notice exception as well. The Court of Appeals' failure to mention, distinguish, or explain this Court's guidance provides another strong basis for review by the this Court.[6]

[6] The Court of Appeals also brushed away a host of other cases that support State Farm's reading of the statute and run counter to the Court of Appeals' reading. *See, e.g.*, *Devillers*, 473 Mich 562, ("a no-fault action to recover PIP benefits may be filed more than one year after the accident and more than one year after *a particular loss has been incurred* (provided that notice of injury has been given to the insurer or the insurer has previously paid PIP benefits for the injury)"); *Ross v Allstate Ins Co*, No. 245165, 2004 WL 435393, at *3 (Mich App Mar 9, 2004) ("The plain language of the statute mandates that *the* nature of *the* injury must be indicated for the defendant to be properly notified. Michigan courts have consistently held that providing notice of *an* injury is insufficient to provide the insurer with a basis for evaluation of a claim. A

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In short, the plain reading of the statute is that the claimant must give written notice of the injury for which he or she is seeking recovery of benefits, not of some other injury, to extend the one-year statute of limitations. There is strong textual support for this reading, and extremely weak textual support for the Court of Appeals' contrary reading. Plaintiff here failed to indicate in ordinary language in her notice of injury the "nature" of her hip injury—the injury for which she actually sought recovery of benefits from State Farm. Simply put, Plaintiff's notice of shoulder or back road-rash injuries was not sufficient to provide notice of her hip injury for purposes of Section 3145(1). Plaintiff's failure to comply with the plain language of MCL 500.3145(1) means that her late-filed action is barred by the statute of limitations.[7]

D. Why Granting Leave Is So Important in this Case

Section 3145(1) is the statute of limitations applicable to all no-fault actions in Michigan, and its one-year limitations period "protects no-fault insurers against stale claims." *See Auto Club Ins Ass'n v New York Life Ins Co*, 440 Mich 126, 139; 485 NW2d 695 (1992). It is also a

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claim for *specific benefits* must be submitted. Notice must be *specific enough to inform the insurer of the nature of the loss*."); *Cunningham v Auto-Owners Ins Co*, No. 259521, 2006 WL 2355509, at *2 (Mich App Aug 15, 2006) ("the statute requires that the insurer be put on *notice of a specific injury, not just of a general claim*"). State Farm cites these latter two unpublished decisions because they are directly on point and demonstrate a conflict in the Court of Appeals' decisions warranting resolution by this Court.

[7] Plaintiff also argued below that her insurance policy with State Farm did not preclude her claim, because the policy provided that the insured should provide "all the details about the . . . injury . . . and other information that we may need as soon as reasonably possible after the injured insured is first examined or treated for the injury." Plaintiff argued that this simply requires notice "as soon as reasonably possible after treatment for the injury," not "notice of each particular injury within one year of the accident." (Plaintiff's Br. at 15-16.) But these are independent requirements, and the Plaintiff was required to meet each one. In other words, even if Plaintiff met the *contractual* notice requirements set forth in the policy, she still would have to meet the *statutory* requirements to have a viable claim against State Farm. MCL 500.3145(1) is a statute of limitations provision that expressly bars actions filed more than one year after an accident unless the plaintiff meets the notice or payment exceptions. If the plaintiff does not meet an exception, then the action is barred, whether she met contractual requirements or not.

critical component of a "comprehensive legislative scheme with the goal" of "protecting no-fault insureds by requiring the prompt payment of claims." *Id.*

As this Court has repeatedly recognized, ensuring that Section 3145(1) is "enforced by the courts of this state as our Legislature has written it, not as the judiciary would have had it written" is of paramount importance to maintaining this comprehensive legislative scheme. *Devillers*, 473 Mich at 586. Yet the Court of Appeals has re-written Section 3145(1) according to the way three judges would have had it written. It ignored the Legislature's express "written" notice requirement, and held that an oral notice was sufficient. And it turned the "written notice of injury" requirement on its head by holding that notice of some other injury was sufficient to extend the statute of limitations as to the actual injury for which the plaintiff seeks recovery of no-fault benefits.

The Court of Appeals' published decision "involves legal principles of major significance to the state's jurisprudence." MCR 7.305(B)(3). It also is "clearly erroneous and will cause material injustice"—not just to State Farm, but to all insurers providing no-fault benefits in Michigan, and thus their insureds as well through higher premiums—and, as set forth above, the decision "conflicts with a Supreme Court decision or another decision of the Court of Appeals." MCR 7.305(B)(5)(a), (b).

This Court addressed the "one-year-back" rule of Section 3145(1) in *Devillers*, and the "payment" exception this term in *Jesperson*. By granting leave to appeal in this case to address the only remaining clause of Section 3145(1)—the notice exception—the Court can provide a comprehensive and uniform reading of the plain language of the statute for all litigants going forward. State Farm urges the Court to grant leave to appeal.

CONCLUSION AND RELIEF REQUESTED

State Farm respectfully requests that this Court grant leave to appeal to confirm that the plain language of MCL 500.3145(1) provides that a plaintiff may not file an action for recovery of no-fault benefits more than one year after the date of the accident causing the injury unless the plaintiff provides written notice of injury within one year of the accident, including a description of the nature of the injury for which the plaintiff seeks recovery of benefits.

In the alternative, since the Court of Appeals ignored the "written" notice requirement altogether and the plaintiff in this case provided only oral notice of injury, State Farm respectfully requests that the Court peremptorily reverse the Court of Appeals' and trial court's decisions, and remand with instructions to grant judgment to State Farm on the ground that Plaintiff's action is barred by Section 3145(1).

Respectfully submitted,
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By: /s Paul D. Hudson

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Dated: June 14, 2016

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